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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 22 2010
SRC-07-800-21971

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development and consultancy company. It seeks to employ the beneficiary permanently in the United States as a programmer analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a Form ETA 750 Application for Alien Employment Certification (Form ETA 750) approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of experience stated on the labor certification. Specifically, the director determined that the petitioner failed to demonstrate that the beneficiary possessed five years of progressive experience in the specialty and two years of experience in the job offered or related occupation as required by the certified Form ETA 750 prior to the priority date.

The record shows that the appeal is properly and timely filed, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

The key to determining the job qualifications is found on Form ETA-750 Part A. This section of the application for alien labor certification describes the terms and conditions of the job offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

> ***Minimum Education, Training, and Experience Required to Perform the Job Duties.*** Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education:	eight years of grade school, four years of high school and four years of college; Master Degree or Equivalent* in computer science, information systems or mathematics
Experience:	two years of experience in the job offered or related occupation
Block 15:	* Will accept a Bachelor's degree in Computer Science, Information System/Electronics and/or Math[s] and five years of progressive experience in lieu of Master's degree and two years of experience

The record contains the beneficiary's bachelor of engineering in electronics awarded by Bangalore University in July 1992 and transcripts for his four years of study at that university. There is no evidence showing that the beneficiary obtained a master's degree. Therefore, the beneficiary met the minimum level of education required for the equivalent of an advanced degree, namely a bachelor's degree, for preference visa classification under section 203(b)(2) of the Act prior to the priority date.

However, to qualify for the second preference classification in this case, the beneficiary must establish that he possessed at least five years of progressive experience in the specialty after his bachelor's degree but prior to the priority date as the regulation requires and two years of experience in the job offered or related occupation as the underlying labor certification specially required. The director determined that the evidence in the record did not establish that the beneficiary possessed the required experience. On appeal, the petitioner submits additional evidence and asserts that the beneficiary possessed all required experience.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The record contains seven letters from the beneficiary's former employers regarding his requisite experience submitted as evidence of the beneficiary's qualifications.

The first letter is dated October 28, 2005 and signed by [redacted] verifying that the beneficiary worked for the company as a project manager from April 25, 2005 to October 19, 2005. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which as noted above, is January 31, 2005. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Therefore, the post-priority date experience cannot be considered as qualifying experience for the proffered position in this case and thus, this experience letter cannot be accepted as evidence of the beneficiary's qualification.

The second document is a service certificate which is dated November 24, 2005 and signed by [redacted] verifying the beneficiary's employment as a Consultant 2 for eight months and 20 days from July 22, 2004 to April 11, 2005. This letter only verifies the beneficiary's six months of experience from July 2004 to January 2005 because the experience after the priority date of January 31, 2005 cannot be considered as qualifying experience. Moreover, the service certificate does not include a specific description of the duties performed by the beneficiary. Without such a specific description, the AAO cannot determine whether the beneficiary's six months of work experience as a consultant 2 with Satyam Computer Services Ltd. qualify him to perform the duties described for the proffered position of programmer analyst in Block 13 of the Form ETA 750 Part A. Therefore, the service certificate provided by Satyam Computer Services Ltd. does not meet the requirements set forth at 8 C.F.R. § 204.5(g)(1) and thus cannot be accepted as evidence of the beneficiary's qualification.

The third letter is dated July 13, 2004 and signed by [redacted]

verifying that the beneficiary worked for the company as a Specialist in the Technology Integration Service Area from July 10, 2003 to July 13, 2004. While the entire one year experience period was obtained prior to the priority date and thus is countable here for the beneficiary's qualifications, this letter does not include a specific description of the duties performed by the beneficiary. Without such a specific description, the AAO cannot determine whether the beneficiary's one year experience as a specialist with this company qualify him to perform the duties described for the proffered position of programmer analyst in Block 13 of the Form ETA 750 Part A. Therefore, the third letter does not meet the requirements set forth at 8 C.F.R. § 204.5(g)(1), and thus, the AAO cannot be accepted it as evidence of the beneficiary's qualifications.

The fourth letter is dated May 16, 2003 and signed by [redacted] verifying that the beneficiary was employed with the company as a Senior Software Engineer from May 15, 2002 to May 8, 2003. This letter includes a specific description of the duties performed by the beneficiary. The record contains a relieving letter, dated May 16, 2003, from [redacted] in support with the contents of the fourth letter dated May 16, 2003. The AAO finds that the fourth letter from [redacted] meets the requirements set forth at 8 C.F.R. § 204.5(g)(1), and accepts it as evidence of the beneficiary's qualifications. Therefore, the petitioner has established with regulatory-prescribed evidence that the beneficiary possessed one year of post-bachelor but prior to the priority date experience in the specialty and the related occupation required.

The petitioner submitted an additional letter from [redacted] This fifth experience letter in the record is dated January 15, 2001 and signed by [redacted] in California. This letter states that the beneficiary "worked for [redacted] in the U.S. since March 1, 2000. He was employed at our India operation, [redacted] since April 1999." However, this letter does not include a specific description of the duties performed by the beneficiary and does not even indicate the positions/titles the beneficiary serviced in the U.S. or India operations. Without positions and specific descriptions the beneficiary performed, the AAO cannot determine whether the beneficiary's experience with [redacted] both in India and U.S. qualifies him to perform the duties described for the proffered position of programmer analyst in Block 13 of the Form ETA 750 Part A. Therefore, this letter does not meet the requirements set forth at 8 C.F.R. § 204.5(g)(1), and thus, the AAO cannot be accepted it as evidence of the beneficiary's qualifications.

The sixth letter is dated June 26, 2001 and signed by [redacted]. This letter states in pertinent part that: "This letter is to confirm that [the beneficiary] is a full time, permanent employee of [redacted] and is based out of the San Francisco office. [The beneficiary] has been an employee with [redacted] since January 15th 2001." This letter does not indicate the ending date of the employment, however, since the letter is dated June 26, 2001, the AAO only consider the five months from January 15, 2001 to June 26, 2001 as the employment period verified by this letter. The record shows that [redacted] had an I-129 H-1B nonimmigrant petition approved on behalf of the beneficiary for a period from November 13, 2000 to August 30, 2003. However, the record does not contain evidence showing that the beneficiary was actually employed with [redacted] for the entire approved period. Furthermore, this letter does

not include a specific description of the duties performed by the beneficiary and does not even indicate the position the beneficiary serviced in the company. Without the position and a specific description the beneficiary performed, the AAO cannot determine whether the beneficiary's five months of experience with Roundarch qualify him to perform the duties described for the proffered position of programmer analyst in Block 13 of the Form ETA 750 Part A. Therefore, this letter does not meet the requirements set forth at 8 C.F.R. § 204.5(g)(1), and thus, the AAO cannot be accepted it as evidence of the beneficiary's qualifications.

The seventh experience letter is dated August 5, 1999 and signed by [redacted] certifying that the beneficiary was in employment with the company as a Systems Engineer from April 9, 1998 to March 31, 1999. However, this letter does not include a specific description of the duties performed by the beneficiary. Without such a specific description, the AAO cannot determine whether the beneficiary's one year experience with this company qualifies him to perform the duties described for the proffered position of programmer analyst in Block 13 of the Form ETA 750 Part A. Therefore, the third letter does not meet the requirements set forth at 8 C.F.R. § 204.5(g)(1), and thus, the AAO cannot be accepted it as evidence of the beneficiary's qualifications.

The eighth and last experience letter in the record of proceeding is dated April 15, 1998 and signed by [redacted] The employer certifies in the letter that the beneficiary worked with the company during the period January 1996 to March 1998 as a software programmer on areas as C, C++, Unix & Sybase. The AAO finds that the eighth letter is from the beneficiary's former employer and includes the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary, and therefore, meets the requirements set forth at 8 C.F.R. § 204.5(g)(1). The AAO accepts it as evidence of the beneficiary's qualifications. Therefore, the petitioner has established with regulatory-prescribed evidence that the beneficiary possessed another two years and two months of post-bachelor but prior to the priority date experience in the specialty and the related occupation required.

The underlying labor certification specifically requires five years of progressive experience in the specialty and two additional years of experience in the job offered or related occupation. As discussed above, the petitioner only established the beneficiary's three years and two months of qualifying experience with regulatory-prescribed evidence. The record does not contain any other regulatory-prescribed evidence concerning the beneficiary's qualifying experience for the proffered position. Therefore, the petitioner failed to establish that the beneficiary possessed five years of progressive experience in the specialty and two additional years of experience in the job offered or related occupation prior to the priority date, and thus, the beneficiary does not meet the job requirements on the labor certification. For the reason mentioned above, the petition may not be approved.

The petitioner's assertions on appeal cannot overcome the grounds of denial in the director's June 9, 2008 decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought

remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.